

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ; ROBER
GALVEZ-CHIMBO; SHARON HATCHER;
JONATHAN MEDINA; and JAMES WOODSON,
individually and on behalf of all others similarly
situated,

Petitioners,

-v.-

MARTI LICON-VITALE, in her official capacity
as Warden of the Metropolitan Correctional Center,

Respondent.

No. 20 Civ. 3315

DECLARATION OF DAVID
CROSBY

DAVID CROSBY declares the following under penalty of perjury and pursuant to 28 U.S.C.
§ 1746:

1. My name is David Crosby and I was housed at the Metropolitan Correctional Center (“MCC”) from August 5, 2019 to May 13, 2020. My Registration Number is 62833-054. When I came to the MCC I was originally in 5S, then was moved to Otisville because of the gun incident, then went back to the MCC to 11S in middle of March 2020.
2. I am 43 years old.
3. I have the following medical conditions: I have severe asthma and have no spleen.
4. On 11S I was in Tier 10. There are 26 inmates to a tier, and six tiers, numbered 7 through 12. It is a dorm atmosphere once you get inside. There were about 130 people in 11S. We slept in bunk beds. The beds were so close that when lying down I could reach my arm out and touch the bed next to me. The beds were loose and weren’t secured properly; when you were in them they would shake. There is supposed to be a ladder to

get to the top bunk, but there aren't any ladders whatsoever at the MCC for this. It's really unsafe because you have to use a chair, sometimes stacking the chairs, to get up to the top.

5. When the virus started kicking in they put us on lockdown. They never gave us masks; they only gave masks to the staff members. It wasn't until recently that they started giving out masks. And the masks they gave were such bad quality, we had to keep rewashing them. They never gave us gloves, and they didn't have unlimited spray bottles and soap.
6. They started up putting up signs a day prior to the inspection, indicating that you could request cleaning supplies, and reminding us to wash our hands. The warden was in there early in the morning telling people what to do. They brought out wax and buffers the day before the inspection, and the counselor told me, "make sure this place is looking nice and sharp, we have visitors coming." But I didn't make an extra effort to clean anything, I wanted the people coming to see how it really is. It's like someone who stinks putting on a new outfit when they didn't take a shower, they are still dirty underneath.
7. The night before the inspection they brought someone back to our unit from the box. It was someone who had it, and had been taken out for 14 days. When he returned they had him working in the kitchen, where he could be touching everyone's food.
8. I believe that everyone in there had it. Personally, I had every symptom except for a fever – I had body chills; I was waking up in a cold sweat; I couldn't taste or smell; I had a cough, a sore throat. I had to keep drinking tea with lemon, and took Halls. They just started putting Robitussin and allergy medicine in the commissary but they didn't have it there before. I requested medical care, but they said if I didn't have a fever, they couldn't

do anything about it except give me Tylenol. And when you put in a request for a sick call on the computer it could take five days, even longer.

9. They tested three from 11S: Robert Russo, from Tier 9, Parisi, and a Brazilian guy, from Tiers 11 and 12. I used to call him Brazil. They all had it. Russo they took out in a wheelchair and he was gone for 23 days, but they brought him back to the same place. The other guys they brought back as well, and they didn't quarantine their clothes, sheets, nothing.

10. I requested a COVID-19 test but I never got one. Even the warden tested positive.

Everyone asks for tests, but if you are yelling or a little bit aggressive, they put you in the SHU. We would request a test and they would tell us they would come back, but they never did. They didn't tell us anything about the protocol for getting tested. I know only about the people in our unit who got tested, and only the ones who were really in a bad way got tested. Russo tested positive, and they sent him away. But when they brought him back, they didn't retest him or take everyone out of the tier and clean. So I saw, if they aren't even retesting a guy they know had it before they put him back in with everyone, there is no chance that they are going to test me.

11. They removed one person from my tier, but they didn't test him. Everyone in my tier had symptoms. Chris Karimbux – he had a fever one day and he couldn't get out of bed; we made him get up and try to get medical attention; we didn't want to get sick from him. They took his temperature and his fever was 100-something. But they just sat him down in the front of the room and brought him back Tylenol. They didn't remove him. They said that you have to have a fever of 104 or higher for them to take you out.

12. A lot of people were trying to act like they weren't sick because once you tell them you are sick, they put you in the SHU. When you are in the SHU, you only get one call every 30 days. The living conditions are really bad there, and the mice in the SHU are even worse.
13. When they brought us back to 11S after Otisville, they mixed us in with pre-trial. I was a cadre – we wear greens, and the rest of the inmates wear jumpers. So I'm not supposed to be with people being sent back and forth to court. We heard that somebody from the MCC had gone to court with someone who tested positive. The first inmate who tested positive at the MCC was from 11S, and he was a cadre, but we don't know how he got it.
14. There are mice everywhere. They don't give people mouse traps. I have to turn my head the other way at night to not see them. They come out of the holes in the walls. I'm a grown man and I hate mice; I see one and they'll make me jump up on the bed. They are running around everywhere like they own the jail. The day before the inspection they brought in the exterminator. There was also a lot of mold everywhere.
15. They didn't give us any hot meals, only bagged up, cold food.
16. When you say you want medical attention, to get it you have to be so bad that you've fallen down and are not able to get up anymore.
17. In the inspection, they called me out to talk to the lawyers. They asked to speak to Russo too. I thought I would get to speak to them in private, but when I went up there, there was an officer, a big guy, who was present the whole time they were asking me questions.
18. When they do issue us spray bottles, they don't give us any cleaning cloths or rags to use it with. People rip their old towels up to make cloths. But then they don't clean the

cloths, so you might clean the table with a rag, and then clean the phone with a rag, so really you are just making everything dirtier. The common areas were getting cleaned by us with the rags we made, but we never had anyone else come in to properly clean.

19. When the inspection came, they started handing out bars of soap. Before the inspection, we weren't given bars of soap. So if you are unfortunate and don't have any money in your commissary account, you had to borrow soap.

20. Not all of the staff members would wear their masks. They would come to work sneezing, coughing, not wearing their gloves. But they would still show up at work.

21. I was a food orderly, and my only job was supposed to be to hand out the food. But when I was out there I would help to wipe down the phones and computers because I noticed that the people who were supposed to be doing it were not. Everyone gets out for two hours every day, and between shifts at the phones and computers where one group leaves and the next comes in, it's someone's job to spray down the phones and computers. But even for this they had to use the dirty, hand-me-down rags, and it wouldn't always get done.

22. It's been a really long time since we were first on lockdown, since February 27th when a C.O. smuggled in a gun to one of the inmates, and we were still on lockdown when I was released. They have loosened some of the rules a bit recently – you are supposed to get 300 minutes a month for calls, but now they are giving 500 minutes and they don't charge you for calls. Before, the commissary limit was 25 dollars a week, and now it's 50 dollars a week. They're doing these things because they realize how they are treating us inhumanely so they are trying to make up for it a little bit.

23. There was only one washing machine and dryer for 11S. I didn't have problems washing my laundry in the washing machine because I was an orderly. But a lot of people couldn't wash theirs. Or they wouldn't have any soap powder. Before, people used to wash their blankets and sheets in the washing machine, but two or three weeks before the inspection they said we couldn't do this anymore, and started doing linen exchange. But I didn't want to use the washing machine because sick people were washing their clothes in there and didn't want their sickness touching my stuff. So I would hand wash my clothes every day and then would hang them up. They only give you one fan per tier, and it blows out dust.

24. Overall, my experience at the MCC was very mentally draining and it took its toll on me. For the gun incident, we were on lockdown being punished for something we didn't even do; it was an officer who brought it in and he just got sent home pending further investigation while we suffered the consequences. The way they handled our property when they were looking for the gun was so disrespectful. I've been in prison for ten years, so the stuff I have is what I accumulated, like pictures of my parents, who both died when I was in jail. But they mixed up all of our stuff and we couldn't get a lot of it back because they didn't put it back with who it belonged to.

25. Inmates at the MCC feel like they don't have a voice to speak up and raise their concerns. It was really hard to be in there with so many sick people. It really messed me up mentally and made me feel like I was on high alert and defense, just to see people approach me and always wonder if they had just washed their hands or not. I still feel jumpy even though I'm on the outside.

26. I consent to my BOP medical records being provided by the BOP to Covington & Burling, the law firm suing the MCC in this class action. I would like my medical records to be kept under seal, but they may be shared with the judge and the government in support of my statements about my medical condition and the medical care at the MCC. I understand what the lawsuit is about, how my medical records will be used, and that I have the right to refuse to give access to my medical records. This consent is valid throughout the term of the class action lawsuit. I have been allowed to ask questions about this, and my questions have been answered. I have been read this consent language. I have been told that I will be mailed a copy of this declaration, including my consent to the release of my medical records.

Executed on: May 26, 2020
New York, New York

As reported by David Crosby to Katri Stanley

